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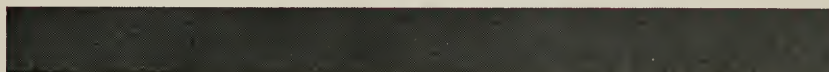
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EDITORIAL NOTE

In accord with the purposes of the University as a State-supported educational institution, the Institute of Labor and Industrial Relations aims at general education as well as at the special training indicated in its title. It seeks to serve all the people of the State by promoting general understanding of our social and economic problems, as well as by providing specific services to groups directly concerned with labor and industrial relations.

This *Bulletin* series is designed to present periodically information and ideas on topics of current interest in labor and industrial relations. The presentation is non-technical and is designed for general, popular use. No effort is made to treat the topics exhaustively. At present 10 issues a year are scheduled with additional special issues from time to time.

Additional copies of this *Bulletin* are available. A charge of five cents a copy will be made, except that the first 10 copies will be furnished free of charge to individuals and groups in Illinois. Also available are copies of these other Institute *Bulletins*.

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THE CONCILIATION PROCESS

By **W. ELLISON CHALMERS**
Associate Professor of Economics

"Mr. Employer, it looks as though we can't work out our disagreement by this process," the local union president reluctantly stated. "Of course we always knew we could go out on strike. We've said all along we would if we had to and we believe we can force you to come to terms. We don't want to, but it looks as though there is no other way for us to get what we are entitled to. We asked for a 20-cent increase because we are sure we are entitled to it. We believe we have demonstrated to you, beyond any logical argument, that the increased cost of living and the profits of the company entitle us to it. In the interest of being reasonable and because we would rather live with the company in peace, we have even gone so far as to say that we would accept 13 cents. Certainly that is much less than we are entitled to. But we are not going to compromise any further, and your offer of eight cents is impossible."

"Such a statement just doesn't make sense," the general manager responded. "On the one hand you say that you want to be reasonable and don't want to strike; and on the other, you refuse to give proper consideration to what we have said. We showed you that your cost of living figures were wrong, that you have a completely inaccurate picture of the company profits and prospects, and above all, that to grant your demands would endanger the competitive position of the company, and therefore the welfare and jobs of our employees. We can't stop you from striking, but let me warn you that we are determined to stick to our position, because it is a fair position, and sooner or later you will agree to what we are now proposing."

Situations like this develop on many occasions in union-management negotiations in the thousands of plants in Illinois. What should the parties do next? The question is of urgent importance to the employer, to the workers involved, and to their union. It well may be of great importance to the public.

WHY THE NEXT STEP IS IMPORTANT

Let us consider first the importance to the participants. (1) The *terms* of the eventual agreement are important to each side. As in the illustration, they often involve wage rates. If the workers are seriously affected by rising living costs, the size of the negotiated pay increase directly affects their welfare. Equally, if the employer is really hard pressed to balance rising production costs against competitively-set selling prices, the welfare of the company is as directly involved. Although disputes vary greatly in detail, they usually are of serious enough proportions on the substance of the disagreements that the economic interests of each side are substantially or even vitally affected.

(2) The parties are also concerned with *when* the disagreement is settled. Almost all disputes eventually end in settlements. Whether settled without a showdown economic fight, during such a fight, or after one, the final agreement represents a general approximation of the strength of the two sides. But *when* they are settled makes a great deal of difference. Directly involved in the timing of the settlement is not only the direct economic cost of conflict to each side but also the less apparent economic effect on the employer's market, productivity in the plant, the future bargaining position of the union and many other factors.

(3) In many disputes the *resulting relationships* are more important than either the terms or the timing of the settlement. For each of them a particular dispute is simply an incident in a long process of living together. In most disputes the most important problems are of relationships. Management has its own problems of establishing or continuing an effective management structure, discipline, and a spirit of plant cooperation. This problem affects not only the bargainers but the whole range of management from the foreman to the chief executive officer. The union has its own problems of morale and support.

Both management and labor, in addition, are concerned with building their relations with each other. Although engaged in an industrial dispute, management frequently wants to achieve a settlement that will recognize the reasonable claims of its employees and strengthen the cooperative attitudes of both employees and

union leaders. The union representatives as frequently are anxious to improve the quality of their dealings with management. For both, therefore, the fundamental concern is the effect of the solution of the specific dispute upon their future relations.

The public has a general, but nonetheless basic, interest in the satisfactory conclusion of the disagreement. An essential element of the free economy to which the country is committed is the free collective bargaining process, carried on so that substantial justice is reached between the economic interests and so that increasingly large and efficient production results. It is fundamental to the efficient working of the economic system that this bargaining be carried out with the least possible interference with production. Thus, it is of great public concern not only that stoppages be avoided whenever possible, but also that plant disorganization be held to a minimum during the bargaining period.

WHAT WILL THE NEXT STEP BE?

When management and the union come to the deadlock summarized in the opening paragraphs, they have a choice between four different next steps. (1) They can agree to try harder to reach an agreement by further bargaining. In a great majority of cases, it is this first alternative which is chosen. If they can finally succeed in reaching an agreement, they will have gained a closer working relationship by voluntarily settling their differences. (2) They can call on the services of a government conciliator to help them in coming to an agreement. It is this process which this bulletin deals with. (3) They can refer the question to some outsider as an arbitrator. This alternative has the advantage of maintaining a peaceful relationship between them and of assuring an impartial study of the various claims of the parties. It has the serious disadvantage of abandoning their own responsibility to reach agreement. It leaves both parties open to the danger that an unwise decision will be made for them by an outsider and it provides no assurance that a deadlock is less likely to occur when they resume negotiations in the future. (4) They can, as the union leader suggested, proceed to a strike. There may be circumstances in which that process will be considered by either the employer or the union

members as a necessary and therefore, in the long run, a healthy development. But in most circumstances this will result not only in a loss of income for both parties but may also endanger their efforts to work cooperatively together.

STATE AND FEDERAL SERVICES

Because the last two alternatives are frequently unfortunate, for the parties as well as the public, both the state and federal governments have provided agencies for conciliation and mediation. The agencies are designed to participate on a voluntary basis in negotiations when the parties seek a settlement, but are unable to compose their differences by their own means.

The State of Illinois has assigned to its Department of Labor the responsibility to enter disputes either on its own motion or at the request of either party directly involved. It maintains conciliators who are assigned by the Director to specific disputes. The request for their services may be made to the Director, Robert L. Gordon, Department of Labor, Capitol Building, Springfield, Illinois.

The national government maintains conciliators who are members of the Federal Mediation and Conciliation Service. The request for their services may be made to James J. Spillane, Regional Director, Chicago, Illinois.

These two services work together in order to send their limited staffs to the places most in need of their services. Under provisions of the Labor-Management Relations Act, 1947, and the policy decisions made under it, the federal service limits its participation to those disputes which are interstate in their immediate implications and which have, or threaten to have, a serious effect on interstate commerce.

To understand the work of the conciliator we need to examine the basic objectives of conciliation, the basic guides for action which conciliators have developed from their wide experience, and the particular procedures they use. Let us begin with the basic objectives of the conciliation process.

OBJECTIVES OF THE CONCILIATION PROCESS

Why does the government provide conciliators? There is a two-fold answer, explaining why the government has such a service and why labor and management use it. The objectives of conciliation are: (1) to increase successful collective bargaining, and (2) to maintain the maximum industrial peace.

To Increase Collective Bargaining

It is of fundamental importance, both for the parties directly involved and for the government, that the collective bargaining process work with the highest efficiency. At its best, the process balances the economic interests of labor and management. This requires a reasonably clear understanding by each side of its own goals — economic, organizational and personal — and the goals of the other party. The process goes beyond understanding to a workable drawing together of these goals, recognizing that there are conflicting as well as common interests, that the short-run and the long-time objectives may vary, and that the result needs to be a realistic balance between these goals. In practice, there is not only a drawing together of goals and attitudes, but also a balancing of the economic strength of the two sides. At its best, the process represents the free choice of both management and the union as they each select from the practical alternatives open to them. It is to be expected, therefore, that when they have made their own selection from the available alternatives, they will accept the agreement that results and make it work. Finally, the process is expected to contribute to the welfare of all parties, including a constant improvement in their relations to each other.

In a great majority of cases the parties reach a reasonably successful conclusion of their negotiations without needing any assistance from a third party. It is when they become deadlocked, or when there appears to be a real possibility that they will be stalled, that the conciliator enters. Usually the negotiators are deadlocked because (1) they have failed to adequately understand the goals and problems of each other, or (2) there is present a degree of distrust so that they have never really defined the problems that have to be solved or there is a belief that the other negotiators are not making

a serious and honest effort to reach agreement, or (3) on one or both sides there is not sufficient determination to work out a solution of their separate and joint problems, frequently showing up as an inflexible position by one or both sides regardless of the problems of the other, or (4) there is an unwillingness on the part of some or all of the participants to assume responsibility for the conclusions which appear to be necessary.

When the Conciliator Enters

When the conciliator enters an industrial dispute it is his responsibility to size up the reasons why a deadlock has developed and to help the parties get beyond it. He needs to help each party to clarify its own objectives, to weigh them again in the light of the facts, to understand the objectives and problems of the other party, and to aid them in reaching a situation in which they can realistically make their own choice of alternatives.

The conciliation process is a part of the collective bargaining process and is not a substitute for it. The conciliator cannot substitute his judgments for those of the parties. He cannot decide for them what their goals are and at what point their divergent goals should be balanced. He cannot substitute his judgment for their measuring of the comparative economic strength of the parties. He must be certain that the parties accept the necessity to make their own choices and the responsibility to live up to their agreement.

The conciliation process can be very effective in assisting the process of collective bargaining, but the better the parties are able to meet the requirements of the total bargaining situation, the less need they have for conciliation. Indeed, a basic problem for the conciliator is to make certain that his services are used as little as possible. In general, the more completely the parties are able to work out their own relationships without third party assistance the more likely they are to be building effective relationships within their own organizations and with each other. Thus, the first problem for the conciliator as he makes contact with the case is to determine whether he should enter the dispute at all. He will not decide that he is needed simply because there is lack of agreement between the parties. Disagreement and dispute are the usual pre-

liminaries to final agreement. Frequently he can best serve the collective bargaining process by declining to take part and by insisting that the parties make further unaided and sincere efforts to reach their own agreement.

Nor is this problem involved only in the preliminary decision on participation. If participation is necessary at one point, it may well develop later that the hurdle causing a deadlock has been overcome, and that the parties should resume their own unaided efforts to reach an agreement. And even the process of conciliation itself requires that the conciliator's efforts to bring them to agreement be limited to aiding them to understand and work their own way through their problems to a drawing together of goals.

To Maintain the Maximum Industrial Peace

In general, both sides in the bargaining process prefer a peaceful conclusion of their negotiations. For both employer and worker the costs of a stoppage are usually high. In addition, the relationship which each is striving to build up with the other may be seriously damaged by an economic fight. Of course, these generalizations are not always true. There may be special circumstances for one or even both parties that lead them to believe that an economic showdown will be desirable. In any case, it seldom happens that either side is prepared to accept peace at any price. The basic problem for each participant is to determine what are the costs to each side of an economic conflict and to weigh the advantages of the peaceful means that may be available.

It is the role of the conciliator to help the parties choose peace. As a representative of the public interest, he represents the generalized interest of labor and of management for peaceful and therefore constructive labor relations. More than this, he represents the public interest in avoiding the secondary effects of a stoppage of production: the loss of worker income, the loss of profits, and the emotional conflicts that result. In part his job is to help the parties see more seriously and vividly their own self-interest in a peaceful settlement. More than that, he has a responsibility to insist that the parties look realistically at their public responsibility to seek a peaceful way out.

Applying this second objective — aiding in the preservation of

industrial peace — requires as keen judgments of the conciliator as does the first, of increasing collective bargaining. Frequently, the serious stage of collective bargaining is not reached until each side has gone a long way in testing out how determined the other side is to stick to a proposition. Thus the free collective bargaining process can, and frequently does, involve threats of strikes by unions and the taking of unyielding positions by employers. In such circumstances, the conciliator has to find a balance between his two objectives. Too great an emphasis on the needs for industrial peace may interfere with the necessity for the parties to make their own maximum efforts in collective bargaining. On the other hand, too great passiveness by the conciliator as a deadline nears or during the course of a strike will prevent the conciliator from making his highest contribution to the industrial peace which the long-run interests of the parties and particularly of the public require.

ABILITIES CONCILIATORS NEED

Obviously, these twin objectives need to be applied by individual conciliators. Since the success of conciliation depends so largely on an intimate understanding of the real issues involved and of timing, the individual conciliator's abilities are crucial. To be successful the conciliator must be gifted in his ability to meet and deal with people in such a way as to inspire their confidence in him. He must have integrity and they must believe in his integrity. They must be convinced that he understands his job and can develop maneuvers and ideas which will contribute to the successful working out of their dispute. He must have a calm temperament that can handle conflicting personalities and possibly violent emotions. He needs a keen insight into the reasons why people act as they do, and a sympathetic understanding. The whole process very largely depends on his temperament.

The conciliator needs to know the entire range of industrial relations. He needs to understand fully the subtleties of the collective bargaining process and its many variations. Some part of this understanding he may get by specialized training, but a great deal of it he must gain by personal experience, both as a conciliator and, earlier, as a labor or management participant.

BASIC GUIDES FOR THE CONCILIATOR

A governmental service organized for the twin objectives noted above and composed of well-qualified conciliators might let the man assigned handle each case according to his own best judgment. But more than "good judgment" is necessary. Experience has developed a set of objective guides to action. They indicate the approach followed by the successful conciliator. What are these basic guides for the conciliator?

Be Impartial. The conciliator must avoid both personal bias and other social objectives. Such an edict does not mean that the conciliator is without opinions on successful relationships between management and the union. We have already indicated that he must be an industrial relations expert. He must have clear opinions, therefore, on a wide number of the problems that arise at the bargaining table or that lie unspoken behind the dispute he is dealing with. The requirement of impartiality does not mean that he should be without opinions on the procedures or even the terms that would be most likely to bring the dispute to a successful conclusion. Finally, it cannot be assumed that the conciliator, any more than any other human being, is completely without bias.

Impartiality Is a Subtle Problem. It requires that the conciliator eliminate from his judgment on the case whatever biases he may have, whether they be economic or personal. It requires that he avoid personal prejudice. He needs to concentrate exclusively on helping the parties to an agreement on any terms which they are both prepared to accept. He seeks to promote effective collective bargaining and industrial peace without being influenced by any other personal convictions or social purposes.

Know the Case. The conciliator must know the goals of the parties and the background of the case. Like every other problem in human relations, the issues are almost always more subtle and more complicated than appears on the surface. Indeed the fundamental issue may be an effort to deal with a problem that is not even mentioned in the formal statement asking that the proposal be accepted. To suggest a few possibilities: The real drive behind the management position in our illustration may be the chief bargainer's desire to establish a record for himself with his own

superiors. It may be a need to moderate the strength of the union by besting them in the bargaining. It may be an expected shift in management organization which will affect the positions of the chief bargainer and the others on the management team. Or it may be that the workers haven't been putting out their best personal effort.

On the other hand, the union committee may be concerned principally with the loyalty of workers to the union. The main problem may be a matter of prestige between leaders in the local or in the international. Behind it may lie a desire to find a peaceful solution or the belief that the union's interests are best served by an open conflict. There may be frictions within the union bargaining committee that have meaning in themselves or are symptoms of other problems in the shop.

Relationships Between Personalities

Each negotiation involves personalities as well as issues. Some of the most important elements of the problem may lie in the relationships between personalities, either on the same side or across the bargaining table. The conciliator must understand such personal relationships and the ways he may approach the individuals in order to work with them most effectively.

Gain the Confidence of the Parties. The conciliator cannot get a full understanding of the dispute until the parties have accepted him. This requires not only that he maintain his personal integrity and impartiality but also that they be convinced of both. His actions have to be based on the impressions he makes on the parties as well as on his own convictions. As they accept his impartiality and ability and as they recognize that he needs fully to understand the dispute, both parties will gradually reveal their own problems and objectives. When this sound relationship has been established, the conciliator is in a position to make realistic and acceptable suggestions.

Help the Parties Understand Their Own Problems. Negotiations frequently bog down because of misunderstandings. These may be as simple as the result of faulty speech or hearing. They

are more likely to result from a too limited knowledge of the economic facts in the dispute. These facts may relate to wage rates and wage relationships within the plant, or between plants, or to more complicated problems of production, organization, or human welfare. Whatever they may be, they need to be pretty well understood before the parties can form their own bargaining adjustments to them.

Help the Parties Find the Area of Agreement. Even in a dispute in which only one issue is formally expressed, elements of the issue will have different values for each of the negotiators. If a deadlock is developing it is the job of the conciliator to help the parties balance off these interests by a compromise that saves the most possible for each. When several issues are in dispute, the balance is more complicated, but may be achieved more easily.

Do Not Undercut Negotiators. The representatives at the bargaining table, in almost all cases, have been given power to represent their group. If the conciliator seeks to displace them, he is defeating the long-run objective of voluntary choice by the groups for the sake of short-run success at the bargaining table. It is his responsibility to work with the groups as they appear at the bargaining table.

Encourage Participation of More Responsible Agents. Without trying to readjust the power structure of either side, the conciliator may find it desirable to try to bring more responsible agents into the bargaining process. In general, the bargaining process should be conducted on each side by executives who have the power and are able to make commitments during the course of negotiations. The process must include a mutual study of the problems of the other side. Such a study must be done by those responsible for decisions. Bargaining is also a process of compromise that equally needs the participation of those with authority. The conciliator needs to make sure that enough authority is available on either side to reach compromises and settlement when the opportunity presents itself. On the other hand, the conciliator must be extremely careful not to bring in additional bargainers if the present negotiator will resent the move.

Other Considerations

In addition to these seven basic guides, there are two others that need to be considered. They represent additional aspects of the bargaining problem beyond the fact that signatures need to be attached to a formal document. They are important because they contribute to successful collective bargaining. But they should not be permitted to interfere with the immediate objective of industrial peace.

Help Make Terms as Workable as Possible. As the parties are negotiating toward an agreement they may well be considering terms that are new to them. If agreement can be reached on these terms, but they are likely to give rise to future and more serious frictions, they should be modified during the negotiations if possible. In any such effort the conciliator needs to remember that the first goal is immediate agreement and that future actions of the parties are difficult to predict.

Seek Understanding of Terms. In many cases future serious disputes would have been avoided if the parties signing a formal document had understood more fully how the other party interpreted the words of the document. Within the limits suggested above, the conciliator frequently can contribute to the prospects of future peace by making sure that there is a common understanding and agreement on the meaning of the clauses being recorded.

CONCILIATION PROCEDURES

The conciliation process usually follows a fairly standard procedure. Circumstances of each case will determine how the procedure is applied.

(1) The conciliator usually enters, at the request of one or both parties. His first contact will be with the requesting party. Since, under most economic circumstances, the union is the party initiating the pressure for change, the conciliator most frequently begins by responding to a union request. Occasionally he enters on the basis of a joint request. Such a request has the considerable advantage to the conciliators and the parties of establishing without question the impartial approach expected of him. It also repre-

sents their agreement that his services are welcome and will be acceptable to both.

(2) He meets separately with each. These preliminary conferences are held at an early stage of the conciliator's participation but not necessarily before the first joint session. They have three objectives: (a) to establish a confidential relationship between the conciliator and each party; (b) to provide a preliminary background explanation of the nature of the dispute; and (c) to seek out the areas in which it will be most helpful to resume the negotiations. Such explorations are more or less extensive depending on how much is necessary to accomplish these goals.

(3) He brings the parties into a joint conference. When necessary, it is his decision on the time when a session would be most strategic and its location.

(4) He guides the bargaining procedures. The conciliator will chair the sessions, maintain order, recess and reconvene the sessions, agree on the agenda, the order and the manner of presentation, and stimulate the negotiations when they lag or bring them back to the subject when it seems appropriate. Obviously, his direction of this process is as limited and as subtle as possible.

Conducting Joint Conferences

(5) In the recesses between joint bargaining sessions, he conducts separate conferences with each. In these sessions he explores what lies behind the position of each side much more intimately than is possible in the joint session. Here, he seeks (a) to analyze with each what are the real issues and how vigorously each side is determined to maintain its position, (b) to clear up misunderstandings, and (c) to seek out compromise alternatives.

(6) Wherever the occasion permits, the conciliator will urge the parties to resume negotiations without him. Such a suggestion may be made at any time during the course of the bargaining. It should be made when the conciliator feels that such a procedure has any hope of succeeding.

(7) The conciliator suggests the consideration of alternative solutions. Up to this point, usually, he has chaired the meetings and separately explored their problems, but has not tried to influence the actual joint negotiations. Where it appears necessary,

however, the conciliator may move on to present several alternative compromise solutions. These are designed (a) to "get them talking again" by shifting their consideration to different alternatives, (b) to develop from additional discussions the drives which have not been adequately understood, and (c) to develop the feeling that some kind of a compromise needs to be sought.

(8) He seeks participation of the superiors of one or both parties. As indicated above, this is done when the participant (a) has not sufficient authority and prestige to settle or (b) is taking what appears to the conciliator as too limited and short-sighted a view of his own interests and problems. It is done, usually, by adding the superior to the bargaining group rather than by replacing the original participant.

Suggesting Alternative Steps

(9) He may suggest alternative procedural steps. If the negotiations appear to be too seriously deadlocked, if the problems are serious enough, and the timing makes it necessary, the conciliator may suggest one or another alternative procedural steps. This may simply be the postponement of a deadline to permit time for further negotiations or for the participation of some additional representatives or for some outside event to happen that will influence the attitude of the parties. He may suggest a factual investigation before negotiations are resumed. Or the suggestion may be for a change of location. Or it may be to refer specific issues to arbitration. Or, in accordance with the Taft-Hartley Law, it may be the formal recommendation that the employer's last offer be submitted to a vote of the employees.

(10) In a rare case there may be a final¹ procedural step of recommending to both parties the specific terms for a settlement. Since this is a conciliation and not an arbitration process, such a recommendation is not really the independent judgment of the conciliator as to what "ought" to be the settlement, but is rather

¹ The procedural steps here considered are limited to those usually followed, to the extent the circumstances require, by a single conciliator. This paper makes no attempt to analyze the successful experiments with additional procedural devices beyond the single conciliator, including the addition of a second or a third commissioner, the assignment of an additional conciliation specialist, the change of location to a regional office or to Washington, the use of a tripartite mediation panel or of a fact-finding board.

the basis on which he believes agreement is most likely. To assure himself of this in advance, he will hold separate discussions with each party in advance and make the proposal only after it has been worked out as probably acceptable to both. In most cases of this kind, such a recommendation is merely a device for "saving the face" or saving the bargaining position of each side because the conciliator places on the table what each side is prepared to accept but not to originate or sponsor.

SUMMARY

This analysis has considered the role of conciliation in the collective bargaining process. Whenever labor and management have difficulty in reaching an agreement peacefully, the government conciliation services are available and on call. As this function is better understood it can be more widely and wisely used to the advantage of the parties themselves. Beyond that it represents the most important single device used by the government to assure (1) peaceful industrial relations and at the same time (2) the preservation of voluntary and democratic processes in industry.



